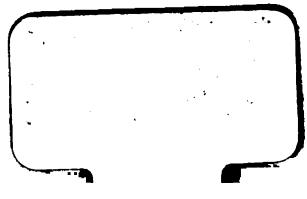

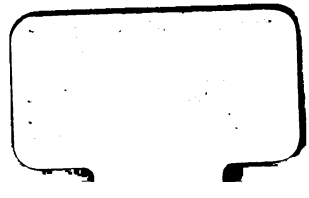

THE LAW

OF

ECCLESIASTICAL RESIDENCES

IN IRELAND.

BY

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THE LAW

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IN IRELAND.

THE law of Ecclesiastical Residences being necessarily of frequent application, and of considerable importance, and being also embarrassed by some differences of interpretation in cases of dilapidation, it is conceived that it may be useful and satisfactory to the clergy to present to them a distinct summary of its principles and prescriptions, especially as in many particulars it differs from the law of England, and is distinct and peculiar.

The foundation of this law for both countries is, indeed, laid in the ancient constitutions of the Church of England, the earliest of which is(*a*) the following provincial constitution of Edmund, Archbishop of Canterbury, issued in the year 1236, or the twenty-first of the reign of Henry III.: "Si rector alicujus ecclesiæ decedens domos ecclesiæ reliquerit dirutas vel ruinosas, de bonis ejus ecclesiasticis tanta portio deducatur, quæ sufficiat ad reparandum hæc, et ad alios defectus ecclesiæ supplendos. Idem statuimus circa illos vicarios, qui solvendo modicam pensionem omnes ecclesiæ habent proventus. Nam cum ad præmissa teneantur, talis portio deducta satis poterit et debet inter debita computari.

(*a*) Gibson's Codex, pp. 789, 790. Lond. 1713.

Semper tamen rationabilis consideratio sit habenda ad facultates ecclesiæ, cum hæc portio fuerit deducenda."

The next is the following legatine constitution of Othobon, issued in the year 1268, or the fifty-second of the same reign. " Improbam quorundam avaritiam prosequentes, qui cum de suis ecclesiis et ecclesiasticis beneficiis multa bona suscipiant, domos ipsarum et cætera ædificia negligunt, ita ut integra ea non conservent et diruta non restaurent; propter quod ecclesiarum ipsarum statum deformitas occupat, et multa incommoda subsequuntur, statuimus et præcipimus, ut universi clerici suorum beneficiorum domos et cætera ædificia, prout indiguerint, reficere studeant condecenter, ad quod per episcopos suos vel archidiaconos solicite moneantur. Si quis vero post episcopi vel archidiaconi monitionem per duos menses id facere cessaverit, ex tunc episcopus ipsius clerici sumptibus id fieri faciat diligenter de fructibus ipsius ecclesiæ et beneficii præsentis auctoritate statuti, tantum accipi faciens, quantum ad refectionem hujusmodi sufficiat peragendam. Cancellos etiam ecclesiæ per eos, qui ad hoc tenentur, refici faciant, ut superius est expressum. Archiepiscopos vero et episcopos et alios inferiores prælatos domos et ædificia sua sarta tecta, et in statu suo, conservare et tenere sub divini judicii attestatione præcipimus ut ipsi ea refici faciant, quæ refectione noverint indigere."

These two constitutions relate to dilapidations, imposing the duty of repairing such as have been left by a deceased incumbent, without any consideration of the particular incumbency in which they may have occurred; and also authorizing bishops to compel the actual incumbent to discharge this duty by an application of a sufficient portion of the income to this object.

We find, moreover, the following constitution of Othobon of the same year, enjoining on incumbents the duty of providing residences where none existed(*a*): " Statuimus quoque ut ipsi

(*a*) Gibson, p. 749.

qui ecclesias in proprios usus habent, domos in ipsarum ecclesiarum parochiis construant, vel olim constructas reædificent, seu conservent, in quibus recipi possint honeste visitantes."

A fourth constitution, issued in the year 1328, or the third of the reign of Edward III., by Archbishop Mephaen, provided for duly holding an inquisition concerning dilapidations, and executing the necessary repairs(*a*): "Statuimus quod nulla inquisitio super defectibus domorum aut aliorum ad beneficium ecclesiasticum spectantium, de cætero facienda, valeat in alterius præjudicium, nisi fiat per viros fide dignos in forma juris juratos, ipso ad hoc, cujus interest, primitus evocato. Integram vero æstimationem defectuum in domibus, aut aliis ad beneficia ecclesiastica spectantibus, repertorum, sive per inquisitionem, vel viam compositionis facta extiterit, loci diocæsanus in reparationem ipsorum defectuum converti faciat infra terminum competentem ipsius arbitrio moderandum."

These appear to have been the ancient ecclesiastical laws to which reference was subsequently made; and, according to them, all trials were conducted in the ecclesiastical courts, and during a considerable time in these alone; nor was any temporal law enacted in regard to such matters, until some ecclesiastics had adopted the expedient of executing fraudulent deeds to deprive their successors of the remedy provided in these courts. The English Act 13 Elizabeth, c. 10, was the first enactment made to counteract this device.

Efforts were made at length, and ultimately with success, to bring questions of ecclesiastical dilapidations into temporal equally as into ecclesiastical courts. Sir Simon Degge, in his treatise entitled Parson's Ley, part i. c. 8, p. 79, was(*b*) the first writer who advanced this notion, alleging that many such actions had been maintained. The(*c*) first case, however, in

(*a*) Gibson, p. 790.

(*b*) Gibson, pp. 791, 792, *note*. Levinz's Reports, part iii. p. 268. Lond. 1722.

(*c*) Levinz, part iii. p. 268.

which judgment was given for the plaintiff, was tried in the third year of the reign of James II. Even after this, in(*a*) the case of *Jones* v. *Hill*, in the reign of William and Mary, the Chief Justice Pollexfen declared, at the Assizes of Warwick, that the question could be tried only in the spiritual court; but he and another of the Judges having died, it was in the superior court, on a rehearing, decided by the two survivors in favour of the plaintiff. Again, in the case of *Okes* v. *Ange*, 6 William III., a judgment was given for the plaintiff in a temporal court, and a prohibition hereupon issued; but Chief Justice Treby doubting, it was adjourned to the following Term. The practice(*b*) has since been fully established in England, and is now in common use as an *action on the case*, the remedy being found to be more effectual than that which is afforded in the ecclesiastical courts.

The ancient constitutions of the church of England have been invested with the authority of law in Ireland by the 28 Henry VIII. c. 13, as in England by the 25 Henry VIII. c. 10, each of these acts having rendered all such ecclesiastical regulations binding, as did not contradict the common law, until a revision of the ecclesiastical law should have been executed, which has not yet been effected. Several enactments have, indeed, been made in Ireland, for providing and maintaining ecclesiastical residences, such edifices having been generally ruined in this country amidst the public commotions, and these have rendered the present law of Ireland concerning these matters different, in certain particulars, from the law of England, though its fundamental principles, as here stated, have remained unaltered. The first of these, the 10 Will. III. c. 6, states in the preamble the occasion of these enactments; the others appear to have been adopted from time to time, for remedying defects discovered on its application.

(*a*) Levinz, p. 413. Burn's Eccles. Law, vol. iii. p. 153.

(*b*) Rogers' Pract. Arrangement of Eccles. Law, p. 315. Lond. 1840.

In the preamble of the 10 Will. III. c. 6, it is stated that "the mansion-houses of several archbishops, bishops, and other ecclesiastical persons, have been ruined and destroyed by the frequent wars and rebellions that have happened in this kingdom, whereby residence has become very difficult and is like to continue so, unless due encouragement be given to them to rebuild and repair their former houses, and to erect new houses where it shall be convenient, and to keep them in good repair after they are built." With these views, accordingly, it is enacted, that every ecclesiastical person that heretofore did, since the year 1690, or should afterwards, at any time, make, build, erect, add to, or repair any house, outhouse, garden, orchard, or any other necessary improvement on his demesne, glebe, or mensal land, or in any other lands in his possession, belonging to his see or church, that should be properly certified to be fit and convenient for the residence and habitation of him and his successors, "which from thenceforth shall be deemed and taken to be part of the demesne, glebe, or mensal land of such see, dignity, or benefice," should receive from his immediate successor, or his representative, two-thirds of the sum so expended, "necessary annual reparations only excepted," the said immediate successor being entitled to receive one moiety thereof, or one-third of the original disbursement, from his next successor; these sums being to be paid by four equal half-yearly payments, in the case of removal, and by two in the case of death. To this provision it is added that, "because it may happen that more convenient houses, or more commodious situations, might be found, it should, therefore, be lawful for any ecclesiastical person, with the consent of his superior, the chief governor or governors in the case of an archbishop, the archbishop of the province in the case of a bishop, or the bishop of the diocese in all other cases, to purchase residences already made, "thenceforth to be part of their demesne, glebe, or mensal land;" two-

thirds of the price so paid to be repaid as before, together with the charge for necessary repairs and improvements.

For preventing future dilapidations it was further enacted, that every ecclesiastical person might, at his election, in preference to a plenary suit in the ecclesiastical court, recover the cost of the necessary repairs by an *action of debt* in any of the courts of record in Dublin, the sum to be so recovered being, however, limited to that which should be sufficient for putting the houses or improvements in such good repair, as they were in at any time during the last incumbency.

It thus appears that about the same time two distinct processes for the recovery of the cost of repairing dilapidations were introduced in the two countries,—the *action on the case* in England, and the *action of debt* in Ireland; neither, however, superseding the authority of a plenary suit in the ecclesiastical court. The difference may seem to have arisen from the peculiarity of this act of William III., which began in Ireland the practice of imposing a charge on succeeding incumbents for reimbursing builders or improvers. Such a charge constituted a direct and specific debt due from an incumbent to his predecessor, and might naturally form the subject of such an action; and when this action had been so introduced on the one part for the claimant of the cost of a building or improvement, it might naturally be introduced also on the other for the claimant of the cost of repairs, though in this case there was no specific debt directly chargeable. This consideration may further explain why the action in a case of dilapidations is limited to the last incumbency, the nature of an *action of debt*(*a*) requiring that there should be at least some supposed privity between the parties, whereas no such privity can be supposed as a ground of action between an actual incumbent and the predecessor of his predecessor. As the residences of the clergy in Ireland were at this time

(*a*) Stephens on Pleading, p. 15, edit. 5.

generally ruined, an action so limited was sufficient for the present; and in process of time another, and yet more convenient, jurisdiction was introduced, which caused both the *action of debt* and the plenary suit of the ecclesiastical court to be neglected.

Some misapprehensions of the ecclesiastical law, however, appear to have arisen from the provisions of this primary arrangement of our law of ecclesiastical residences, which have caused not a little embarrassment, relating partly to the manner of charging for dilapidations, partly to the extent to which it was permitted to make the charge.

It appears from(*a*) the observations of Dr. Browne, that it has been conceived, " that the last incumbent was bound only to execute small repairs, and that allowance must be made for the natural decay of time;" and he has declared his own opinion, that this, and the subsequent building Statutes in Ireland, give a remedy against successors, " where the present incumbent is deprived of a remedy against his predecessor's family by their insolvency, or by public calamities." It appears to me, on the contrary, that the provisions of this Act in particular, and of the subsequent building statutes, are applicable only to such reparations of a decayed building as may have been necessary for converting into a fit residence a building so ruined in the public disorders as to have ceased to be thus occupied, " the necessary annual repairs," which are excepted from them, being so excepted, not as being less considerable, or as differing in kind, but as occurring in a regular transmission from one incumbent to another. This is evidently the construction of the provision for charging for the reparation of houses purchased to be rendered residences, and the provisions in the two cases appear to be strictly parallel. Again, from the limitation of the sum recoverable by an *action of debt* to the cost of the repairs necessary for restoring

(*a*) Compendious View of the Ecclesiastical Law, pp. 150, etc. Dublin, 1803.

the residence to as good a condition as at any time in the last incumbency, it has been inferred that a claim for dilapidations should not be made in any mode of proceeding beyond the estimated cost of repairing such as had occurred in that incumbency. This, however, is not at all supported by the words of the act, which expressly permit a claimant, who should elect to sue in an ecclesiastical court, to have "the full benefit of the ecclesiastical laws," for these laws extended to all the existing dilapidations. The alternative of an *action of debt* was offered merely as a mode of bringing the question into a temporal court, subject to this limitation by the nature of the action, and to be adopted by the claimant merely at his own election, if considered by him more eligible.

Concerning this act, it only remains to observe, that it required that the sum to be levied for dilapidations, whether in the result of a suit in the ecclesiastical court, or of an *action of debt* in a temporal court, should be expended on the repairs within six months after it had been received, directing that in case of default the benefice should be sequestered by the superior, until such a sum should have been so expended.

These regulations subsisted unaltered about twenty-seven years, at the end of which time it had been found necessary to establish a number of modifications of the law, and among these in particular a beginning was made, though very imperfectly, of a new jurisdiction for disposing of questions of dilapidations.

By the 12 Geo. I. c. 10, it was accordingly provided, that, for preventing the abuse of burdening benefices with charges too considerable in proportion to their incomes, a certificate of such a charge should contain a true account of the clear income of the benefice, and that no greater sum should be charged than the income of a year and a half. It was also enacted, that, as houses built under the former statute had been formed of bad materials, or had been ill constructed, an ecclesiastical person should, three months before he should

begin to make any building or improvement, deliver in a schedule of the particulars for the approval of the person authorized to grant the certificate, with which, as approved, the building or improvement should be compared by commissioners. It was further provided, and it was this regulation which gave a beginning to the new jurisdiction now in question, that the superior, upon complaint of dilapidations made to him by a next successor of a builder or improver, should issue a commission for estimating the cost of the necessary repairs, and should ascertain such sum as he should judge necessary to be allowed for them, which sum should be deducted from the sum payable by the successor, to be expended by him within twelve months.

For the encouragement of building and improving, it was in the same act provided, that a builder or improver should receive from his immediate successor three-fourths of the sum expended, instead of two-thirds, under the same limitation, however, as before, that this sum should not exceed the income of a year and a half; the sum so charged being equally distributed as a charge among three successors instead of two, so that the next successor should pay two-thirds, or one moiety of the sum certified, and the third one-fourth. It was also provided, that these sums should be paid within the times, and in the same manner, as the charges before appointed.

It was further provided, that the buildings should be made of stone and lime, or brick and lime, and timbered with oak or fir timber, bog-oak excepted, and covered with slates, shingles, or tiles, thatch being, however, allowed in the case of livings of less annual income than a hundred pounds. The use of copper for a roof was afterwards permitted by the 25 Geo. III. c. 49, s. 8.

The new jurisdiction created by this act was limited to the case of the original holder of a certificate for building or improving, whose claim, it was presumed, would always exceed that of the successor for dilapidations, so that the latter might

be deducted from the former, and require no special enforcement for compelling payment. As, however, it was found to be very convenient and little expensive, it was after some time extended to the case of others than the immediate successor of a builder or improver, and even made generally applicable to all cases of dilapidations, by the 7 Geo. III. c. 9; and as, in the cases of others than the immediate successors, the claims for dilapidations might often exceed the claims under the certificates, which would be diminished in each succession, and so require some process of enforcement, and in those other cases in which the claims under the certificates had expired, a process of enforcement would be required for the whole cost of dilapidations, provision for such enforcement has been accordingly made in the fifth and concluding section of the act, which directs it to be done "in such manner as by the laws now in being the sums adjudged to be paid or allowed for dilapidations are recoverable."

These words seem to indicate with sufficient distinctness and perspicuity a plenary proceeding in the ecclesiastical courts, as affording that example of the mode of enforcement, which under this act was to be applied to the summary proceeding of the bishop. The *action on the case* has never been adopted in the legal practice of Ireland, and the *action of debt*, of which an election had been given to incumbents by the 10 Will. III., cannot be considered as a process, by which, according to *the laws now in being*, sums were adjudged or allowed to be paid for dilapidations; for these laws were the ecclesiastical laws, extending to the whole of the dilapidations, not limited by a compromise, as in the *action of debt*, to those which had occurred in the last incumbency.

Under this act the repairs of the residences of the Irish clergy have now been conducted without objection or question during about seventy years, no doubt having ever been entertained concerning the sufficiency of the power of the bishop for maintaining and enforcing his decision, as founded

on the report of such a commission as has been directed by the law; recently, however, this power has been denied even by persons of high consideration and authority, and it has become necessary to examine this act with attention, that it may be ascertained whether the uniform practice of that long period of time must now be abandoned as untenable.

The 7 Geo. III. c. 9, though very brief, as consisting only of five sections, is miscellaneous, providing remedies for three several deficiencies, but in the third, fourth, and, as it seems, the fifth section, referring to the 12 Geo. I. c. 10, and rendering more perfect the authority given by that act to a bishop in cases of dilapidations. That prior act is expressly cited in the third and fourth sections, but not in the fifth; and the question to be now considered is, whether the fifth section should be considered as relating to the same act, and introduced in continuation of the third and fourth, or as introducing, though without any intimation whatever, a different case of legislative provision, not previously the subject of any enactment.

In the third section we find an amendment of the law for issuing the commission; in the fourth we find an extension of the application of this summary process to the case of others than the original holders of a certificate for building or improving; the fifth goes on to say, "and in all cases whatsoever," a like process may be adopted, pointing out the manner in which it was to be enforced. The fifth, therefore, appears to have been introduced in direct continuation of the fourth, as an enlargement of that extension of application which had been begun in the preceding; and the mode of enforcement which it indicates, as belonging in common to both, though more certainly requisite in the latter, as including no charges under certificates. So strongly indeed has this been felt, that it has been judged necessary to represent the fifth section as belonging to quite a different case of dilapidations, namely, that in which a bishop is empowered to in-

be by a monition requiring payment of the sum so certified, and by a process for contempt if that monition should be neglected.

It has indeed been objected, that the jurisdiction so formed would be a bad one, because without appeal; but it seems to become subject to appeal in the proceeding taken to enforce it; for the monition issued by the ecclesiastical Judge for this purpose is subject to appeal equally with any of his judicial proceedings, the peculiarity of this other jurisdiction consisting essentially in this, that the report of a commision is substituted for such evidence as might be produced in the prosecution of a plenary suit.

By the 9 Geo. II. c. 13, and the 17 Geo. II. c. 8, some further changes were made in the law of building and improving residences.

By the former it was enacted that no ecclesiastical person should, in this respect, be deemed a successor, who should die or be removed within one year from the death, translation, or removal of the immediately preceding incumbent. This considerate provision necessarily drew with it a change in the arrangement of the payments to be made for satisfying a charge; and it was accordingly enacted, that one moiety of the sum charged should be payable at the end of one year, or as soon as the incumbent shall have become a successor chargeable therewith, as being entitled to a year's profit, and the other moiety by two equal half-yearly payments within the next year.

This provision, which appears to have been very necessary when the incomes of the clergy, payable in tithe, became due only as the tithe was severed from the ground, has lately become important, as furnishing an argument to prove that a charge for building or improving can be considered only as a personal charge instead of a charge on the benefice, because it may be indefinitely postponed from one incumbent to another, until the benefice should be held by the same incum-

bent during a whole year, so as to entitle him to receive a year's profit. It seems, however, on the contrary, that, to form a judgment of the meaning of the 9 Geo. II. c. 13, consideration should be had of the nature of the incomes of the clergy at the time when that act was framed, and long afterwards. They then consisted chiefly of tithes, to which a clergyman did not become entitled until they had been severed, so that on the day preceding the severance he might not have been entitled to receive any income whatever, though he had held the benefice nearly, or even wholly, a year. On the other hand, a clergyman then commencing his incumbency might *become entitled to the whole income of a year* after an occupation of a very few days. By this provision, therefore, the charge for building or improving was attached, not to the persons of the successive incumbents, but in the first instance to the income of the first year, as being, under the authority of the certificate, the property of the preceding incumbent, or of his representative. The operation of this provision has indeed been changed by the substitution of rent-charges for tithes, because the former have been rendered payable half-yearly, and have even been apportioned for shorter intervals. This change, however, cannot be considered as affecting the meaning of the act in its original import, though perhaps a new act should now be framed, apportioning the incumbrances, as the payment of the incomes has been already apportioned.

This is not merely a speculative difficulty, for it concerns the actual situation of the parish of Killeeshal, in the diocese of Armagh, in which a receiver appointed by the Lord Chancellor has superseded the claim of the representative of the preceding incumbent for a house erected on the glebe. The question, however, has yet been but slightly considered; and it may be hoped that a different view may be taken of it, when it shall have been again brought forward. It is in right of possessing the goods of the church, that a clergyman becomes bound to provide out of them and maintain a residence; and

by the act now considered the receipt of the income of the first year determines the actual commencement of the liability to pay for buildings or improvements charged upon the benefice. The practice of ecclesiastical courts has, I believe, followed this construction, notwithstanding the change made in the payment of the incomes of the clergy by the substitution of rent-charges, as if the payment of such charges were regulated simply by the fact, that a year's income were somehow, whether by one or more persons, become receivable. It may thus appear that the charge for the house is, by the law, attached to the income of the benefice, not to the person of the next successor, and should, therefore, be treated as an original incumbrance, to be discharged previously to any other claim.

That a claim for dilapidations has such a priority, has been distinctly recognised in a judgment pronounced by Chief Baron Wolfe in the Irish Court of Exchequer(*a*), in the case of *Baker* v. *Swayne*. In this case the defendant, dying insolvent, terminated by his death a sequestration to which the benefice had been subjected. The sequestrator then delivered to the bishop the balance of the sum levied, after certain necessary deductions, and the bishop referred to the court to determine how it should be applied. The baron pronounced the judgment of the court to be, that the claim for dilapidations had priority of the other claims, and that the bishop was authorized to apply in repairing them a sum not exceeding a moiety of the entire amount of the profits received by him; which sum, by proceeding under the statute, he might have compelled the incumbent to apply in this manner.

It was further provided by this act, that it should be sufficient to give in a specification of an intended building or improvement a fortnight before the commencement of the work. By the 17 Geo. II. c. 8, it was also provided, that it should

(*a*) Jones and Carey, vol. i. part 2.

be sufficient to deliver an account in the general of buildings to be repaired, and of the sum to be expended on such repairs.

From the terms of this other act, the 17 Geo. II. c. 8, it has been inferred, as from the 10 Will. III., that the repairs of very considerable dilapidations might, by a memorial, be transferred as a charge against successors, while only moderate costs of this kind should be charged to the last incumbent. This, however, does not appear to be the true purport of either act. Repairs are certainly mentioned in connexion with improvements, and both are conjointly charged to successors; but these repairs are described as executed in preparing future residences, not as required in the actual occupation of buildings already approved and constituted such. An old house, to be converted into an ecclesiastical residence, was first to be repaired, then, if this should be necessary, improved; and the joint amount of the two expenditures was to be charged to successors, as if a new house were built. The repairs to be charged for dilapidations in the successive occupation of the house by several incumbents, are described in the 10 Will. III. as "necessary annual reparations," and in the 17 Geo. II. as "annual necessary repairs," and in each are excepted from its operation.

At length, the inconvenience of providing residences in this manner having been amply experienced, as appears from the statement contained in the 12 Geo. III. c. 17, s. 7, additional encouragement was by that act granted for building houses wholly new, the builder being allowed to charge his successor with the whole sum certified, to the extent of the income of two years; all further claims in regard to the old house, with all obligation of repairing it, being at the same time discharged. It was, however, provided that this encouragement should be limited to the case of a house built on a new site, and consequently not extended to improvements, the charge for these being accordingly left as regulated by the 12 Geo. I. c. 10. The condition of building on a new site

appearing to have been required generally for the purpose of separating more distinctly such a case from that of an old house repaired, it seems that the new site should be wholly separate from that of a former residence, so that no work should be common to the two buildings. The increased charge for a house built on a new site was by this act payable in four payments instead of three, the additional fourth being payable at the end of two years from the time when the next successor became chargeable with the sum certified: it was also distributed among four instead of three successors.

For the residence of a perpetual curate the charge is limited to £50, by the 11 & 12 Geo. III. c. 16, s. 3, as appears, however, in contemplation of a grant of £200 required from the Board of First Fruits.

By the 31 Geo. III. c. 19, provision was made for the case in which an ecclesiastical person, building or improving, should die or be removed, not having completed his building or improvement. It was in this case directed that a commission should be issued for ascertaining what sum would be necessary for completing the work; and that the difference between the sum which the person so dying or being removed would have been entitled to receive, and the sum ascertained to be further required, should be allowed for the work already executed, the person completing such building or improvement to be considered as the original builder or improver.

In these acts no specific direction has been given in regard to the time of payments to be made by other than the immediate successors of an improver, either in regard to the times or to the proportions of payments. These cases, however, have been, in practice, regulated by analogy to the case of an immediate successor, so that one-half of the charge is to be paid at the end of the first year, and the other half by two equal half-yearly payments in the next.

In practice it is required that the cost of any proposed improvements, conjointly with any existing charge, should not

exceed the income of a year and a half. Such a limitation, however, is not required specifically in the acts, these requiring only that the cost of the improvements themselves should not exceed that limit. The case of an existing charge appears to have been overlooked, as concurring with a charge for improvements; but it is agreeable to the intention of the law that a benefice should not be charged beyond that amount, except for building a house on a new site.

This series of acts was completed by the 4 Geo. IV. c. 86, which provided for the case of such decay as should have rendered further repairs impracticable. In this case, "the buildings being too ancient or decayed to be repaired," the superior is authorized to direct that new buildings should be erected, the cost of which must, of course, be charged to succeeding incumbents, as if no buildings had previously existed.

In determining whether a building is sufficiently decayed to be condemned, the consideration is not the same as in the case of an owner of a decayed house deliberating whether it would be more advantageous to him to pull it down and build a new one, than to repair it, because, in the case of an ecclesiastical residence, the cost would be transferred from the last to succeeding incumbents. It should, therefore, appear, not merely that it would be more desirable to build a new house, but that the old one could not longer be so repaired as to be fit for a residence. Of this condition there seems to be only one criterion. So long as the walls are sufficient to support a new roof, so long is a house capable of being rendered habitable by repairs; but when they have, from whatever cause, deflected from a perpendicular position, or, by exposure to weather, or gradual decay have so mouldered as to have become incapable of sustaining the necessary weight, it is then clear that it cannot be usefully repaired, and may, according to this act, be condemned. It should here be remarked, that the act has not directed that any inquiry should be made concerning the origin of the decay, but merely concerning the

fact of its existence, which, therefore, is the sole object of inquiry for a commission issued on such an occasion.

An opinion has prevailed that, when a house has been thus condemned, any charge still remaining on account of the house must cease of course, the house itself ceasing to exist; and hence it has been inferred that, if a set of offices should be condemned, a proportional part of a remaining charge, which had appertained to them, must in the like manner be deducted. There is, however, no such direction in the 4 Geo. IV. c. 86. There is, indeed, in the 12 Geo. III. c. 17, a direction that such charges should be relinquished when a new house is built upon a new site; but this provision is limited to the case of a change of site, and is not applicable to buildings simply restored upon the same, the object of the act appearing to be, to put an end to the former method of providing residences for the clergy. Nor, indeed, was this properly a case of condemnation of residences, as incapable of being repaired, for an incumbent is, by the act, discharged from the obligation of repairing that which he had relinquished. The truth is simply this, that the act first, in the third section, offers an increased advantage to those builders of new houses on new sites, who have not already residences, and then, in the seventh, extends this advantage to all those who have houses on the old plan, provided that they should be willing to relinquish the claims which they hold in right of those houses, and commit themselves wholly to the new. The latter provision, besides that it is evidently of a special and temporary character, may be considered as proving, by requiring a voluntary relinquishment, that a charge would not cease on a mere abandonment of a residence.

These two acts, the 4 Geo. IV. c. 86, and the 12 Geo. III. c. 17, may be considered to furnish an additional argument in support of the principle, that a charge for a house is an original incumbrance on a benefice, for it appears that the charge may remain attached to the benefice, after the house had

in the year 1624; the estimated sum claimed for dilapidations was £399 18*s*. 6*d*. In forming his opinion of the correctness of the estimate, the Judge took into consideration three different cases: the first, that of leaving the buildings in good and substantial repair, the painting, papering, and whitewashing, being in proper decent condition for the immediate occupation and use of his successor; the next, that of repairing the buildings as buildings ought to be left by an outgoing lay tenant, who is bound by covenant to leave them in good and sufficient repair, order, and condition; and the third, that of leaving them wind and weather tight, or in that state of reparation in which an outgoing lay tenant, not obliged by covenant, ought to leave them. The dilapidations had been estimated, as in the first case, agreeably to the practice then universal. For the second case they would have been estimated at £310, in which sum charges for painting, papering, and whitewashing, were not included. For the last case the estimate was only £75 11*s*. In comparing these estimates the Judge pronounced that, although he was not satisfied with the estimate founded upon it, the second case approached most nearly to the proper rule, and would coincide with it if the terms *order* and *condition* be understood not to include matters of ornament and luxury. He finally pronounced judgment for £369 18*s*. 6*d*., which sum appears to have been the sum originally claimed, reduced by deducting the cost of papering, whitewashing, and such part of the painting as was not required for preserving wood from decay by exposure to the external air.

In applying the principle of this judgment, it seems that chimney-pieces and grates should not be included, unless they had been included in the schedule for building or improving, or had been transmitted without charge from a former incumbent. Chimney-pieces, indeed, are merely ornamental, and may, according to the fancy of an incumbent, be rendered exceedingly expensive; for grates, too, though not altogether

superfluous, much unnecessary expense may be incurred. These articles, therefore, except in the two specified cases, should, it seems, be considered as removable, unless retained under specific agreements. It is to be remarked(*a*), on the other hand, that hedges, fences, and gates upon glebe-lands, are amongst the things which a beneficed clergyman is bound to repair. Concerning fixtures(*b*), the general distinction between those which are removable and those which are not removable is, that the former class comprehends those which are not *let into the earth;* the latter, those which are so let in, not merely placed upon the surface.

A clergyman should make application to his bishop for a commission of dilapidations as soon as may be after he has, by induction, received temporal possession of his benefice. If this should be delayed any considerable time, allowance must be made for such additional dilapidations as may have occurred since the benefice became vacant.

The law of dilapidations is still defective in both countries, by the want of a systematic enforcement. The bishop may at present provide a remedy for the negligence of an incumbent only when he has received a report of it from the rural dean of his district; and it has appeared from experience, that the reports of rural deans are not sufficient for this purpose: some more stringent method of obtaining the necessary information is required, especially as it must frequently happen, in such a case, that there is not a sufficient charge against the successor to balance the account. A periodical inspection of all the residences of a diocese by an architect, is the only effectual method of procuring it. This, indeed, could not be held without expense; but it might be hoped that, in the general regularity and comfort of such an arrangement, an adequate

(*a*) Rogers, p. 309; Cripps's Pract. Treat. on the Laws of the Church and the Clergy, p. 278. London, 1845.

(*b*) Grady on the Law of Fixtures, book i. chap. i. London, 1845.

compensation would be found, especially as the expense, it may be supposed, would fall more lightly upon those who should be most careful of their residences.

To these statements must be joined two others, one relating to curates occupying the residences of absent incumbents; the other, to the authority of a bishop for compelling an incumbent to build on his glebe. In regard to the former it has been enacted, 5 Geo. IV. c. 91, s. 64, that they should pay all taxes and parochial rates and assessments, and for repairs, if they have salaries equal to the profits of the benefices. In regard to the latter it has been enacted, 1 Geo. II. c. 15, s. 4, and 31 Geo. II. c. 11, ss. 1, 2, that after three years' possession an incumbent shall be required to build, if his preferments, singly or collectively, produce an annual income of one hundred pounds; and that a fourth part of the income may be sequestered for the purpose, until a year and a half's income be received.

THE END.